

REMARKS

Claims 1 – 3, 8 – 11, 14, 15, 17 – 20, 25 – 28, 30, 31, 33, 39, 42 and 43 are pending in the Application. In the above-identified Office Action, the Examiner allowed Claims 9 – 11, 14, 15, and 17. Claims 1, 9, 18, 26 and 39 - 43 were rejected on the grounds of nonstatutory obviousness-type double patenting. Claims 1 – 3 and 17 – 19 were rejected under 35 U.S.C. 102(b) as being anticipated by Sakakibara ('517). Claims 8 and 25 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sakakibara ('517) in view of Kumar *et al.* ('761). Claim 43 was rejected under 35 U.S.C. 103(a) as being unpatentable over Ng *et al.* ('383) in view of Sakakibara ('560).

By this Amendment, Claims 1 – 3, 8, 18 – 20, 25 and 42 have been canceled.

The rejection of Claims 17 – 19 on page 4 over Sakakibara appears to be in error inasmuch as Claim 17 depends from Claim 9, not Claim 1 and the Examiner subsequently separately cites a ground of rejection on page 5. This response is based on the assumption that the rejection of Claims 17 – 19 was meant to be a rejection of Claims 18 – 20. Clarification is requested.

Regarding Claim 43, the Examiner suggests that at col. 5, lines 37 – 40, Ng teaches **setting** a discharge current in accordance with temperature. However, the referenced passage merely refers to **sensing** the discharge current, not **setting** the discharge current. The reference passage reads as follows:

“...sensing a voltage (V) of the battery; current sensing circuitry connected for **sensing** a discharge current (I) of the battery; a temperature sensing device positioned for sensing a temperature (T) of the battery; a battery monitoring unit con-“
(Emphasis added)

Clearly, neither Ng, Sakakibara nor any of the other references cited, teach, disclose or suggest a method of exercising a battery including the steps of setting a discharge current in accordance with temperature and discharging the battery at the discharge current. Inasmuch as there is a substantial operational difference between sensing a discharge current and setting a discharge current, Claim 43 should be allowable as well.

Inasmuch as the remaining Claims rejected over cited art have been canceled and a terminal disclaimer is filed herewith to address the Double Patenting rejection, Claims 9 – 11, 14 – 15, 17, 26 – 28, 30 – 31, 33, 39 and 43 should now be allowable.

Reconsideration, allowance and passage to issue are therefore respectfully requested.

Respectfully submitted,
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